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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ALVIN JOE WESLEY,

Plaintiff,

v.

UNITED STATES OF AMERICA; DARYL A.
TRUJILLO; MORGAN E. COSEU; AND DOES
1 to 50, inclusive,

Defendants.

Case No. 15-cv-3618-MEJ

**STIPULATION AND AGREEMENT OF
COMPROMISE AND SETTLEMENT
AND [PROPOSED] ORDER**

It is hereby stipulated by and between the undersigned Plaintiff, Alvin Joe Wesley (“Plaintiff”), and Defendant, United States of America (“Defendant” or “United States of America”), by and through their respective attorneys, as follows:

WHEREAS, Plaintiff filed the above-captioned action on August 7, 2015;

STIPULATION AND AGREEMENT OF COMPROMISE AND SETTLEMENT AND [PROPOSED] ORDER
CASE NO. 15-CV-3618-MEJ

1 WHEREAS, Plaintiff and Defendant wish to avoid any further litigation and controversy and to
2 settle and compromise fully any and all claims and issues that have been raised, or could have been
3 raised in this action, and which have transpired prior to the execution of this Stipulation and Agreement
4 of Compromise and Settlement (“Agreement”);

5 NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and
6 other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as
7 follows:

8 1. **Agreement to Compromise Claims.** The parties do hereby agree to settle and compromise
9 each and every claim of any kind, whether known or unknown, arising directly or indirectly from the
10 acts or omissions that gave rise to the above-captioned action under the terms and conditions set forth in
11 this Agreement.

12 2. **Definition of “United States of America.”** As used in this Agreement, the United States of
13 America shall include its current and former agents, servants, employees, and attorneys, including but
14 not limited to the United States Postal Service, and/or its current and former agents, servants,
15 employees, and attorneys.

16 3. **Settlement Amount.** In settlement of this action, the parties agree that the United States of
17 America (1) will pay Plaintiff eighteen thousand four hundred eighty-nine dollars and twenty-three cents
18 (\$18,489.23) and (2) will waive its first lien of twenty-four thousand and ten dollars and seventy-seven
19 cents (\$24,010.77) upon any settlement or judgment rendered in favor of Plaintiff for recovery of all
20 insurance benefits paid to or on behalf of Plaintiff by The Hartford and/or Coalition for Elders
21 Independence (“Settlement Amount”). This sum shall be in full settlement and satisfaction of any and
22 all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by
23 reason of any and all known and unknown, foreseen and unforeseen personal injuries, damage to
24 property and the consequences thereof, resulting, and to result, from the subject matter of this
25 settlement, including any claims for wrongful death, for which Plaintiff or his guardians, heirs,
26 executors, administrators, or assigns, and each of them, now has or may hereafter acquire against the
27 United States of America.

1 4. **Release.** Plaintiff and his guardians, heirs, executors, administrators, or assigns hereby agree
2 to accept the Settlement Amount in full settlement and satisfaction of any and all claims, demands,
3 rights, and causes of action of whatsoever kind and nature, including claims for wrongful death, arising
4 from, and by reason of any and all known and unknown, foreseen and unforeseen personal injuries,
5 damage to property and the consequences thereof which they may have or hereafter acquire against the
6 United States of America on account of the same subject matter that gave rise to the above-captioned
7 action, including any future claim or lawsuit of any kind or type whatsoever, whether known or
8 unknown, and whether for compensatory or exemplary damages. Plaintiff and his guardians, heirs,
9 executors, administrators, or assigns further agree to reimburse, indemnify and hold harmless the United
10 States of America from and against any and all such causes of action, claims, liens, rights, or subrogated
11 or contribution interests incident to or resulting from further litigation or the prosecution of claims by
12 Plaintiff or his guardians, heirs, executors, administrators, or assigns against any third party or against
13 the United States, including claims for wrongful death.

14 5. **Dismissal of Action.** In consideration of the Settlement Amount and the other terms of this
15 Agreement, Plaintiff shall immediately upon execution of this Agreement also execute a Stipulation of
16 Dismissal, a copy of which is attached hereto as Exhibit A. The Stipulation of Dismissal shall dismiss,
17 with prejudice, all claims asserted in this action, or that could have been asserted in this action. The
18 fully executed Stipulation of Dismissal shall be held by Defendant's attorney and will be filed within
19 five (5) business days of receipt by Plaintiff's attorney of the Settlement Amount.

20 6. **No Admission of Liability.** This stipulation for compromise settlement is not intended to be,
21 and should not be construed as, an admission of liability or fault on the part of Defendant, the United
22 States of America, its agents, servants, or employees, and it is specifically denied that Defendant is
23 liable to the Plaintiff. This settlement is entered into by all parties for the purpose of compromising
24 disputed claims and avoiding the expenses and risks of further litigation. This Stipulation shall not be
25 used in any manner to establish liability in any other case or proceeding involving Defendant.

1 7. **Parties Bear Their Own Costs.** It is also agreed, by and among the parties, that the parties
 2 will each bear their own costs, fees, and expenses and that any attorney's fees owed by the Plaintiff will
 3 be paid out of the Settlement Amount and not in addition thereto.

4 8. **Attorney's Fees.** It is also understood by and among the parties that pursuant to Title 28,
 5 United States Code, Section 2678, the portion of attorney's fees for services rendered in connection with
 6 this action shall not exceed 25 per centum of the amount of the compromise settlement.

7 9. **Authority.** The persons signing this Agreement warrant and represent that they possess full
 8 authority to bind the persons on whose behalf they are signing to the terms of the settlement.

9 10. **Waiver of California Civil Code § 1542.** The provisions of California Civil Code Section
 10 1542 are set forth below:

11 "A general release does not extend to claims which the creditor does not know or suspect
 12 to exist in his or her favor at the time of executing the release, which if known by him or
 13 her must have materially affected his or her settlement with the debtor."

14 Plaintiff, having been apprised of the statutory language of Civil Code Section 1542 by his attorney, and
 15 fully understanding the same, nevertheless elects to waive the benefits of any and all rights he may have
 16 pursuant to the provision of that statute and any similar provision of federal law. Plaintiff understands
 17 that, if the facts concerning Plaintiff's injuries and the liability of the Defendant for damages pertaining
 18 thereto are found hereinafter to be other than or different from the facts now believed by them to be true,
 19 the Agreement shall be and remain effective notwithstanding such material difference.

20 11. **Payment.** Payment will be made by check drawn on the United States Postal Service for
 21 eighteen thousand four hundred eighty-nine dollars and twenty-three cents (\$18,489.23) and made
 22 payable to Alvin Joe Wesley and Law Offices of David Azizi. The check will be mailed to Plaintiff's
 23 attorneys, Law Offices of David Azizi, at the following address: 8383 Wilshire Boulevard, Suite 950,
 24 Beverly Hills, CA 90211. Plaintiff agrees that Plaintiff's attorney is responsible for distributing the
 25 settlement proceeds to the Plaintiff. Plaintiff and his attorney have been informed that payment may
 26 take sixty (60) days or more from the date that the Court "so orders" this Agreement to process.
 27 Plaintiff and his attorneys will promptly provide the necessary information, including tax identification
 28 numbers, to effectuate payment.

1 12. **Tax Liability.** If any withholding or income tax liability is imposed upon Plaintiff or
 2 Plaintiff's counsel based on payment of the Settlement Amount, Plaintiff or Plaintiff's counsel shall be
 3 solely responsible for paying any such determined liability from any government agency. Nothing in
 4 this Agreement constitutes an agreement by the United States of America concerning the
 5 characterization of the Settlement Amount for the purposes of the Internal Revenue Code, Title 26 of the
 6 United States Code.

7 13. **Construction.** Each party hereby stipulates that it has been represented by and has relied
 8 upon independent counsel in the negotiations for the preparation of this Agreement, that it has had the
 9 contents of the Agreement fully explained to it by such counsel, and is fully aware of and understands
 10 all of the terms of the Agreement and the legal consequences thereof. For purposes of construction, this
 11 Agreement shall be deemed to have been drafted by all parties to this Agreement and shall not,
 12 therefore, be construed against any party for that reason in any subsequent dispute.

13 14. **Severability.** If any provision of this Agreement shall be invalid, illegal, or unenforceable,
 14 the validity, legality, and enforceability of the remaining provision shall not in any way be affected or
 15 impaired thereby.

16 15. **Integration.** This instrument shall constitute the entire Agreement between the parties, and
 17 it is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by
 18 the parties hereto with the advice of counsel, who have explained the legal effect of this Agreement.
 19 The parties further acknowledge that no warranties or representations have been made on any subject
 20 other than as set forth in this Agreement. This Agreement may not be altered, modified or otherwise
 21 changed in any respect except by writing, duly executed by all of the parties or their authorized
 22 representatives.

23
 24 Dated: 01/03/16


 ALVIN JOE WESLEY, Plaintiff

25
 26 Dated: 12/20/16


 DAVID AZIZI
 Law Offices of David Azizi
 Attorney for Plaintiff

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 28 STIPULATION AND AGREEMENT OF COMPROMISE AND SETTLEMENT AND [PROPOSED] ORDER
 CASE NO. 15-CV-3618-MEJ

1 Dated: 01/04/17



MICHELLE LO
Assistant United States Attorney
Attorney for Defendant

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4 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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6 DATED: January 6, 2017



Hon. Maria-Elena James
United States Magistrate Judge

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EXHIBIT A

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SARA WINSLOW (DCBN 457643)
Chief, Civil Division
MICHELLE LO (NYBN 4325163)
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Attorneys for the United States of America

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**STIPULATION OF DISMISSAL WITH
PREJUDICE**

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiff, Alvin Joe Wesley, and Defendant, United States of America, hereby stipulate to dismiss with prejudice the above-captioned action, including all claims asserted therein. The parties further stipulate that each party will bear its own costs and attorney's fees.

Dated:

ALVIN JOE WESLEY, Plaintiff

Dated:

DAVID AZIZI
Law Offices of David Azizi
Attorney for Plaintiff

Dated:

MICHELLE LO
Assistant United States Attorney
Attorney for Defendant